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 14 AMBU SDN. BHD.

15  
 16 UNITED STATES DISTRICT COURT  
 17 SOUTHERN DISTRICT OF CALIFORNIA

18 THE LARYNGEAL MASK COMPANY  
 19 LTD. and LMA NORTH AMERICA,  
 20 INC.,

21 Plaintiffs,

22 v.

23 AMBU A/S, AMBU INC., AMBU LTD.,  
 24 and AMBU SDN. BHD.,

25 Defendants.

26 Case No. 3:07-cv-01988-DMS-NLS

27  
**28 DECLARATION OF HENRIK WENDLER  
 IN SUPPORT OF DEFENDANTS AMBU  
 A/S, AMBU INC., AMBU LTD., AND AMBU  
 SDN. BHD.'S MOTION FOR LEAVE TO  
 AMEND ANSWER AND  
 COUNTERCLAIMS**

29  
 30 Judge: Honorable Dana M. Sabraw  
 31 Date: August 22, 2008  
 32 Time: 1:30 p.m.  
 33 Courtroom: 10

34 AMBU A/S, AMBU INC., AMBU LTD.,  
 35 and AMBU SDN. BHD.,

36 Counterclaimants,

37 v.

38 THE LARYNGEAL MASK COMPANY  
 39 LTD. and LMA NORTH AMERICA,  
 40 INC.,

41 Counter-Defendants.

1 I, Henrik Wendler, declare:

2 1. I am Executive Vice President, Production, R&D, Supply Chain and Process  
3 Development, and have been employed at Ambu A/S since 01.12.1995. I make this declaration  
4 of my own knowledge, except to any extent otherwise specified. If called as a witness, I could  
5 and would testify competently to the facts set forth herein.

6 2. The Laryngeal Mask Company Ltd. and LMA North America, Inc. (collectively  
7 "LMA"), brought this suit alleging patent infringement by laryngeal mask airway devices  
8 allegedly sold by Ambu in the U.S. LMA also makes laryngeal mask airway devices and sells  
9 against Ambu's devices.

10 3. Several years ago I learned that LMA had authored and distributed a marketing  
11 brochure entitled "A comparative Anatomical Study of Laryngeal Masks" (the "LMA  
12 Brochure"). The LMA Brochure's overriding message is that LMA's laryngeal masks are  
13 supposedly safer than, and thus superior to, other laryngeal masks on the market, particularly  
14 Ambu's competitive products. The LMA brochure purports to be based on a study by David Z.  
15 Ferson, M.D. (the "Ferson Study").

16 4. LMA has distributed its Brochure via mass mailings, the internet, and its sales  
17 force. On numerous occasions LMA sales representatives have contacted Ambu's customers and  
18 prospective customers attempting to dissuade or divert them from purchasing laryngeal masks  
19 from Ambu. LMA has done so by falsely asserting that Ambu's masks cause nerve damage in  
20 reference to the LMA brochure and the Ferson Study.

21 5. In addition to its false claims that Ambu's products are unsafe, beginning several  
22 years ago, LMA has advertised to Ambu's customers and prospective customers that certain  
23 institutions have purchased from LMA, then switched to Ambu, only to switch back to LMA.  
24 LMA represented that these institutions left Ambu for clinical and safety reasons, again referring  
25 to the LMA brochure and the Ferson Study. LMA's characterization of Ambu's business  
26 relationships with these institutions is false and misleading. For example, several of the  
27 institutions were never customers of Ambu and had never purchased Ambu's laryngeal masks.

28 6. Ambu was under the impression that LMA had ceased the above marketing and

1 sales tactics. However, I very recently learned, on or about July 1, 2008, that LMA has resumed  
2 the conduct described above.

3

4 I declare under the penalty of perjury under the laws of the United States of America that  
5 the foregoing is true and correct. Executed this 11th day of July, 2008, at Ballerup, Denmark.

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7 Dated: July 11, 2008

  
Henrik Wendler  
Ambu A/S

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule 5.2 on July 11, 2008.

By: s/ Dennis Faigal

Dennis Faigal

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